BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KENDRA LEWIS a/k/a KENDRA LEGGETT, Claimant, vs. TYSON FOODS, INC., Employer, Self-Insured, Defendant.	:	File No. 19006313.01 ARBITRATION DECISION Head Notes: 1402.40; 1800; 1803; 2500; 2700

STATEMENT OF THE CASE

The claimant, Kendra Lewis, filed a petition for arbitration seeking workers' compensation benefits from employer Tyson Foods, Inc. ("Tyson"). Laura Pattermann appeared on behalf of the claimant. Dillon Carpenter appeared on behalf of the defendant.

The matter came on for hearing on September 8, 2022, before Deputy Workers' Compensation Commissioner Andrew M. Phillips. Pursuant to an order of the Iowa Workers' Compensation Commissioner, the hearing occurred electronically via Zoom. The hearing proceeded without significant difficulty.

The record in this case consists of Joint Exhibits 1-8, Claimant's Exhibits 1-3 and 5-6, and Defendant's Exhibits A-F. The exhibits were received into the record without objection.

The claimant testified on her own behalf. Kristi Miller was appointed the official reporter and custodian of the notes of the proceeding. The evidentiary record closed at the end of the hearing, and the matter was fully submitted on October 7, 2022, after briefing by the parties.

STIPULATIONS

Through the hearing report, as reviewed at the commencement of the hearing, the parties stipulated and/or established the following:

1. There was an employer-employee relationship at the time of the alleged injury.

2. The claimant sustained an injury, which arose out of, and in the course of, employment on or about June 22, 2019.

3. That the alleged injury is a cause of temporary disability during a period of recovery.

4. That, if the injury is found to be a cause of permanent disability, the disability is an industrial disability.

5. That, at the time of the alleged injury, the claimant's gross earnings were six hundred twenty and 60/100 dollars ($620.60) per week, and that the claimant was single, and entitled to three exemptions. Based upon the foregoing, the parties believe that the weekly compensation rate is four hundred thirteen and 74/100 dollars ($413.74) per week.

6. With regard to disputed medical expenses noted below:

    a. The fees or prices charged by the providers are fair and reasonable; and,
    b. Although casual connection of the expenses to a work injury cannot be stipulated, the listed expenses are at least causally connected to the medical conditions upon which the claim of injury is based.

7. The costs listed in Claimant's Exhibit 5 have been paid.

Entitlement to temporary disability and/or healing period benefits is no longer in dispute. Entitlement to credits against any award are also no longer in dispute. The defendant waived their affirmative defenses.

The parties are now bound by their stipulations.

ISSUES

The parties submitted the following issues for determination:

1. Whether the alleged injury is a cause of permanent disability.

2. The extent of permanent disability, if any is awarded.

3. The proper commencement date for permanent partial disability benefits, if any are awarded.

4. Whether the claimant is entitled to a reimbursement of medical expenses, as listed in Claimant's Exhibit 6.

5. With regard to the disputed medical expenses:

    a. Whether the treatment was reasonable and necessary.
    b. Whether the medical providers would testify as to the reasonableness of their fees and/or treatment set forth in the listed expenses.

c. Whether the listed expenses are causally connected to the work injury.
d. Whether the requested expenses were authorized by the defendant.

6. Whether the claimant is entitled to alternate medical care pursuant to Iowa Code section 85.27.

7. Whether an assessment of costs is appropriate.

FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

Kendra Leggett Lewis, the claimant, was 34 years old at the time of the hearing. (Testimony). She resides in Omaha, Nebraska, with her spouse, mother, and five children. (Testimony). Two of the children are the claimant's biological children, and the remainder are her stepchildren. (Testimony).

Ms. Lewis graduated from Omaha Northwest High School in 2007. (Testimony). While in high school, she played basketball. (Testimony). She testified that she had no issues with breathing or asthma when she played basketball. (Testimony).

After graduating from high school, the claimant obtained her CNA license. (Testimony). She then worked in the CNA field for some time. (Testimony). During that time, she had no issues with breathing or asthma. (Testimony).

From 2009 to July of 2012, the claimant worked at Florence Nursing Home. (Testimony). She then worked at Ameristar Casino in Council Bluffs, Iowa, from February of 2014 to April of 2016. (Testimony). From February of 2015 to June of 2018, she also worked as a housekeeper at an Element Hotel in Omaha, Nebraska. (Testimony).

Immediately prior to working for Tyson, the claimant worked two CNA jobs with different employers. (Testimony). These included A Place Called Home and Direct Care Professionals. (Testimony). She then worked a production job at Oriental Trading. (Testimony). At Oriental Trading she earned around eleven and 00/100 dollars ($11.00) per hour. (Testimony). She worked 40 hours per week. (Testimony). She left Oriental Trading because she wanted a different job. (Testimony). While working at Oriental Trading, she had no issues with her breathing or asthma. (Testimony).

In May of 2019, Ms. Lewis began working at Tyson. (Testimony). She was hired as a bagger operator. (Testimony). This position involved checking bags of pepperoni, and at times setting completed bags of pepperoni in boxes and pushing them down a conveyor. (Testimony). She described this as a physically demanding job. (Testimony). She had to hand load and/or push things down the conveyor 40 to 50 percent of the time. (Testimony). As a bagger operator, she worked in a refrigerated section of the plant for up to eight hours per day. (Testimony). She had to wear gloves, a white smock, a hardhat, and ear protection. (Testimony). She earned fourteen and

70/100 dollars ($14.70) per hour and worked 40 or more hours per week. (Testimony). She did not like this job because she found it boring. (Testimony).

On June 22, 2019, Ms. Lewis described an incident when she began to experience chest tightness, wheezing, shortness of breath, and a cough, shortly after beginning her shift. (Testimony). She told one of her coworkers and her supervisor. (Testimony). Her supervisor contacted human resources, who put her in touch with the nursing staff at Tyson. (Testimony). The nursing staff advised her to proceed to the emergency room. (Testimony).

Ms. Lewis's sister drove her to the emergency room at CHI in Omaha. (Testimony; Joint Exhibit 1:2-11). Ms. Lewis had chest pain on her left side that started suddenly when she was at work. (JE 1:2). She also had shortness of breath. (JE 1:2). The pain in her chest increased when she took a deep breath. (JE 1:2). According to the record, Ms. Lewis told the emergency department that she had similar pain in the past and "was evaluated for it at that time." (JE 1:2). Ms. Lewis noted that she had never smoked but used marijuana. (JE 1:4). Upon examination, the provider found Ms. Lewis to have normal sounds in her chest with no respiratory distress. (JE 1:5). Ms. Lewis had an EKG, which showed a normal sinus rhythm. (JE 1:5). A chest x-ray showed no evidence of acute cardiopulmonary issues. (JE 1:5). The provider noted that they discussed the lab and imaging findings with Ms. Lewis, and that there did not appear to be a serious cause of her symptoms. (JE 1:8). They recommended that she follow-up with her primary care physician on Monday. (JE 1:8). The provider allowed Ms. Lewis to return to work on June 23, 2019. (JE 1:11). Her final diagnosis was "[c]hest pain, unspecified type." (JE 1:9).

On June 25, 2019, the claimant reported to the office of Gregory Ochuba, M.D., Ph.D., for a follow-up of her emergency room visit. (JE 2:17-21). According to the medical record, Ms. Lewis told Dr. Ochuba that her emergency room visit was due to chest tightness and that she had similar episodes of chest tightness in the past. (JE 2:17). Dr. Ochuba prescribed Ms. Lewis two inhalers. (JE 2:20). Ms. Lewis also completed a spirometry test. (JE 2:20). Dr. Ochuba diagnosed Ms. Lewis with asthma, and requested she return in one month. (JE 2:20).

Eventually, her provider told her that she would be better off working in a different position that avoided the cold. (Testimony). Ms. Lewis testified that she told Tyson that she had cold-induced asthma around June of 2019. (Testimony). In response to this, Tyson tried to accommodate her. (Testimony). She was moved to another portion of the building, which had a normal temperature. (Testimony). This was a permanent transfer to a different job with Tyson. (Testimony). Ms. Lewis felt that her symptoms resolved when she moved to a job in a part of the Tyson plant that had a normal temperature, rather than a refrigerated area. (Testimony).

Ms. Lewis returned to Dr. Ochuba's office on July 2, 2019, complaining of chest tightness, wheezing, and coughing. (JE 2:22-27). She told Tiffany Felder, A.P.R.N., that she felt like she could not catch her breath. (JE 2:22). She denied any prior history of asthma or respiratory issues. (JE 2:22). Ms. Lewis told Ms. Felder that she used the inhaler, but felt that it did not help her when she was in the freezer. (JE 2:22). She

wanted to know if her injury was related to "[w]orkman's compensation" due to problems she is experiencing at work. (JE 2:22). Ms. Felder discussed with Ms. Lewis that she "may want to consider finding an alternate employment or asking her current [e]mployer if they would consider her working a different position that is not in the cold." (JE 2:25). Ms. Felder also recommended that Ms. Lewis continue using the previously prescribed inhalers. (JE 2:25).

On July 16, 2019, Melanie Hutchinson, D.O., examined Ms. Lewis for her continued asthma concerns. (JE 2:28-32). Ms. Lewis felt that her breathing worsened when she worked in the freezer. (JE 2:28). She described her breathing as gasping and faster when she was in the freezer. (JE 2:28). Her nose also ran when she was in the freezer. (JE 2:28). Dr. Hutchinson opined that the claimant's asthma was improved when compared to a previous test in June. (JE 2:31). She recommended that Ms. Lewis continue using her inhalers. (JE 2:31-32).

Dr. Ochuba examined the claimant again on July 29, 2019, for her asthma issues. (JE 2:33-39). Ms. Lewis again noted that her asthma flared up when she was at work in a cold room. (JE 2:33). She requested a doctor's note "to state that cold exposure triggers her asthma." (JE 2:33). Dr. Ochuba diagnosed Ms. Lewis with moderate persistent cold-induced asthma without complications. (JE 2:37). He recommended that Ms. Lewis continue using her inhalers and return in one month. (JE 2:37). Dr. Ochuba wrote a note indicating that the claimant had cold induced asthma, and that she would benefit from working in an environment between 68 and 76 degrees. (JE 2:38).

On August 7, 2019, William Ostdiek, M.D., responded to a check-box letter from Tyson. (JE 2:40). He noted that the temperature requirement of 68 to 76 degrees was a requirement and not a recommendation, and that he was in agreement with this as a permanent restriction. (JE 2:40).

Dr. Ostdiek responded to another letter from Tyson on August 21, 2019. (JE 2:41). The letter provided a job description, which noted that Ms. Lewis would be performing janitorial duties on the production floor two to four times per shift for about 20 to 30 minutes at a time. (JE 2:41-42). The temperature in that environment would be 30-45 degrees Fahrenheit. (JE 2:41). Dr. Ostdiek opined that the job would not meet Ms. Lewis's permanent restrictions as previously disclosed. (JE 2:41). He wrote, "[e]ven 20-30 minutes in an environment of 30-45 [degrees] can trigger her cold-induced asthma. Apart from the cold exposure, other job duties in this description would be OK." (JE 2:41).

On August 21, 2019, Ms. Lewis reported to Nebraska Medicine – Fontanelle Clinic, where Anum Samdani, M.D., examined her. (JE 3:44-48). Ms. Lewis had a history of environmental allergies and asthma-like symptoms. (JE 3:44). Her symptoms developed "after she started working at Tyson a couple of months ago." (JE 3:44). She worked in the freezer and began experiencing wheezing, chest pain and watery eyes while she was in the freezer. (JE 3:44). While she had previous environmental allergies, she told Dr. Samdani that she did not have asthma as a child. (JE 3:45).

Upon physical examination, Dr. Samdani found the claimant to have "[g]ood respiratory effort bilaterally," with no wheezes or crackles. (JE 3:47). Dr. Samdani opined,

> At this point, it would seem that her symptoms were triggered by the cold air in the freezer, though it would be difficult to say that the conditions were the cause of her symptoms. She likely has a genetic predisposition to asthma that was triggered by her work environment.

(JE 3:48). Dr. Samdani diagnosed Ms. Lewis with cold induced bronchospasm. (JE 3:48). He would review pulmonary function tests, and opined that he would "not have her spend more than 5 minutes in the freezer given [*sic*] severity of symptoms." (JE 3:48). He recommended that she continue to use her inhaler. (JE 3:48).

Tyson sent Ms. Lewis back into the freezer area to perform parts of her job, including emptying the trash. (Testimony). She entered the frozen section maybe twice per day, and remained in the frozen section for five to seven minutes. (Testimony). During these times, Tyson had Ms. Lewis wear an Avenger mask, which is "a heavy-duty mask." (Testimony). Ms. Lewis testified that wearing the Avenger mask in the cold did not help alleviate her asthmatic symptoms. (Testimony).

Ms. Lewis next visited Venketraman Sahasranaman, M.D., at CHI Health on September 18, 2019. (JE 4:50-54). Upon physical examination, Ms. Lewis was found to have no wheezing, crackling or other issues with her lungs. (JE 4:52). The doctor provided Ms. Lewis with an asthma control test, which asked her to rate her symptoms on a scale of 1 to 5. (JE 4:53). Ms. Lewis had a score of 21. (JE 4:53). The test stated that a score of 19 or less indicated that a person's asthma may not be under control. (JE 4:53). The doctor also reviewed pulmonary function tests and found "elevated DLCO." (JE 4:54). X-rays were also reviewed, which were normal. (JE 4:54). The doctor noted that Ms. Lewis's chronology of symptoms fit with a diagnosis of reactive airway disease, which was likely related to her exposure to a cold environment at her workplace. (JE 4:50). Ms. Lewis was working in a different location and was not experiencing dyspnea. (JE 4:50). The provider recommended that Ms. Lewis stop using Symbicort, but continue using albuterol as needed. (JE 4:50).

On September 18, 2019, Ms. Lewis returned to CHI Health Bergan Mercy Medical Center for a pulmonary function test as prescribed by Dr. Sahasranaman. (JE 1:12-15). The flow-volume curve was noted as normal. (JE 1:13). The spirometry volumes were found to be within normal limits with no acute bronchodilator response. (JE 1:13). Ms. Lewis's lung volumes were found to be within normal limits. (JE 1:13). Her diffusing capacity as adjusted for hemoglobin was noted to be elevated. (JE 1:13). The examiner recommended clinical correlation of the results. (JE 1:13). The diagnosis indicated that the claimant had asthma. (JE 1:14).

Ms. Lewis returned to Dr. Sahasranaman's office on October 3, 2019. (JE 4:54-58). The doctor again recounted Ms. Lewis's history, and findings which included normal spirometry with an "elevated DLCO." (JE 4:55). Ms. Lewis told the doctor that she was again asked to work around the freezer, and that she was provided with a thermal mask. (JE 4:55). However, Ms. Lewis noted that with only intermittent exposure to the freezer, her cough, dyspnea, chest discomfort and mucus production

returned. (JE 4:55). The doctor did not find Ms. Lewis to have any wheezing, but recommended that she undergo a methacholine challenge in order to document bronchoreactivity. (JE 4:55). Once the testing was completed, Dr. Sahasranaman noted the claimant "may need to be exempted completely from exposure to the cold temperatures in the freezer." (JE 4:55). After the appointment, the doctor issued a note allowing Ms. Lewis to return to work on October 4, 2019. (JE 4:58). The note is silent as to any restrictions. (JE 4:58).

On October 7, 2019, Dean Wampler, M.D., of CompChoice Occupational Health Services examined Ms. Lewis. (JE 5:60-61). Dr. Wampler reviewed Ms. Lewis's history, and employment tasks with Tyson. (JE 5:60). Ms. Lewis noted that she was working a janitorial position, wore a Cold Avenger facemask, and only went into refrigerated areas four times per shift for about 20 minutes in order to dump trash. (JE 5:60). Ms. Lewis noted continued symptoms even though she wore the Cold Avenger mask on her trips into the refrigerated area. (JE 5:60). Dr. Wampler noted that cold induced asthma has characteristics that are "extremely similar" to exercise-induced asthma. (JE 5:61). For example, Dr. Wampler notes that both types of asthma cause releases of inflammatory chemicals and "special lymphocyte cells in the lung airways that induce an inflammatory response," which causes bronchoconstriction, wheezing, and coughing. (JE 5:61). Dr. Wampler indicated that the claimant's prognosis was "left open" pending an assessment of the pulmonologist's report. (JE 5:61). Dr. Wampler issued a work status form indicating a diagnosis of cold-induced asthma. (JE 5:62). He restricted the claimant from working in the cold. (JE 5:62). Ms. Lewis was also not at maximum medical improvement ("MMI") according to Dr. Wampler's report. (JE 5:62).

Ms. Lewis visited with Joslyn Pond, A.P.R.N., on October 14, 2019, for a well-woman visit. (JE 7:80-82). Ms. Lewis requested refills of her allergy medications, as she experienced allergy problems with a productive cough "for about [three] weeks." (JE 7:80). She used Symbicort, which helped. (JE 7:80). Upon examination, Ms. Pond found the claimant to have congestion, postnasal drip, sinus pressure, coughing, and wheezing. (JE 7:80). Ms. Pond diagnosed Ms. Lewis with seasonal allergic rhinitis due to "other allergic trigger," wheezing, and weight gain. (JE 7:81). Ms. Pond offered a steroid shot, but Ms. Lewis declined. (JE 7:81). Ms. Pond then issued a note which stated, "[i]t is in my medical opinion that chemicals at Kendra leggett's [*sic*] job are causing her asthma to flare up and causing significant distress." (JE 7:82).

On October 30, 2019, Dr. Wampler wrote a letter to a claims adjuster with Tyson. (JE 5:63). Dr. Wampler indicated that he received records from a pulmonology visit. (JE 5:63). According to Dr. Wampler, there was no explanation in the pulmonology records as to why Ms. Lewis acquired the condition over a relatively short period of time while working in a cool environment. (JE 5:63). He noted that the fact that the claimant improved while being away from cold exposure and then had additional reported symptoms with cold exposure and a methylcholine [*sic*] challenge indicated to him that "the condition is present." (JE 5:63). Dr. Wampler expressed uncertainty as to how Ms. Lewis would perform once cold weather arrived. (JE 5:63). However, Dr. Wampler confirmed that Ms. Lewis could work safely within her current accommodation at Tyson, which included wearing a Cold Avenger mask while in cold areas. (JE 5:63). Dr.

Wampler concluded his letter, "[t]his is considered a permanent position request and accommodation, although reactive airway disease does sometimes improve over time." (JE 5:63).

Dr. Wampler examined Ms. Lewis again on November 5, 2019, and then addressed questions posed by Tyson's claims adjuster in a record from the same date. (JE 5:64-67). Dr. Wampler noted that Ms. Lewis was accommodated by Tyson and wore a Cold Avenger mask. (JE 5:64). When Ms. Lewis wore the mask, she experienced symptoms that Dr. Wampler characterized as an acute illness. (JE 5:64). Since that time, Ms. Lewis had not had the opportunity to work in the cold while wearing her mask. (JE 5:64). Upon examination, Ms. Lewis reported no current respiratory symptoms, and had not experienced any difficulty while walking outside in cold weather. (JE 5:65). She was using an albuterol inhaler as needed, and was not taking Symbicort at the time of her examination. (JE 5:65). Ms. Lewis's cough sounded "bronchospastic." (JE 5:65).

Dr. Wampler noted Ms. Lewis's current diagnosis was reactive airway disease triggered by exertion in cold air at work. (JE 5:65). Dr. Wampler felt that this was the result of Ms. Lewis's work at Tyson as a bagger operator. (JE 5:65). Dr. Wampler recommended that Ms. Lewis work within the previously provided position accommodation, and noted that he told Ms. Lewis that she could return to performing all duties of the position. (JE 5:65). Dr. Wampler noted that the Cold Avenger mask should protect Ms. Lewis from the cold, and that she could enter the cold production area for "15+ minutes" two to three times per shift. (JE 5:65-66). The only other treatment recommended by Dr. Wampler was use of an albuterol inhaler. (JE 5:66).

On November 13, 2019, Ms. Lewis continued her follow-up care with Dr. Wampler. (JE 5:68). Dr. Wampler had requested that she return so that he could evaluate whether she tolerated her full, accommodated work tasks. (JE 5:68). Ms. Lewis told Dr. Wampler that she felt lightheaded and "kind of out of it" at times, which Dr. Wampler speculated could be caused by her albuterol inhaler. (JE 5:68). Dr. Wampler found her lungs to be "quite clear," while a forced cough created a slight prolonged expiratory phase. (JE 5:68). Dr. Wampler told the claimant that her condition was "probably something that she is going to have to adjust to." (JE 5:68). Dr. Wampler recommended that Ms. Lewis use her albuterol inhaler prior to entering the cold even when she wore the Cold Avenger mask. (JE 5:68). Dr. Wampler requested that Ms. Lewis return in two weeks, at which time she would be placed at MMI, provided she was stable. (JE 5:68). Dr. Wampler allowed Ms. Lewis to return to regular work. (JE 5:69).

Dr. Wampler replied to an e-mail from a Tyson occupational health employee on November 21, 2019. (JE 5:70-71). Dr. Wampler opined that Ms. Lewis should be wearing her Cold Avenger mask in the parking lot and outside of work due to her temperature restrictions. (JE 5:70). He also opined that there was nothing else, such as chemicals in the production area, that could be causing her to have issues with breathing. (JE 5:70). Finally, he noted that Ms. Lewis denied reactions to strong odors or cigarette smoke. (JE 5:70). While she "could have come into contact with a

chemical outside of work that might have contributed," it would be impossible to know its effect. (JE 5:70-71).

On November 27, 2019, Ms. Lewis returned to Dr. Wampler's office for a review of her symptoms. (JE 5:72-73). An onsite nurse informed Dr. Wampler that Ms. Lewis alleged spells of nearly passing out and not being able to breathe after walking through production areas. (JE 5:72). Ms. Lewis walks past a locked cabinet which contains cleaning equipment while at work. (JE 5:72). This takes her five seconds, yet she claims that "the odor set her off and she gets episodes where she 'is out of it.'" (JE 5:72). Ms. Lewis told Dr. Wampler that she continued to wear the Cold Avenger mask when she is outside. (JE 5:72). Dr. Wampler noted, "I did not exam [*sic*] Kendra, but tried to talk with her about what I think is [*sic*] unsubstantiated fears." (JE 5:72). Ms. Lewis noted that she provided Tyson with a note taking her off work, but Dr. Wampler noted that an employee at Family Health Care Clinic at CHI obliged Ms. Lewis by providing her with a restriction note while she was there for an unrelated reason. (JE 5:72). Dr. Wampler opined that the restriction had no medical basis. (JE 5:72). He recommended that she have a pulmonary IME. (JE 5:72).

Ms. Lewis voluntarily terminated her work at Tyson on December 4, 2019. (Defendant's Exhibit D:1). She indicated that she left due to a lack of job satisfaction relating to her work conditions. (DE D:1). She testified that she left due to her continued work in a cold environment and her asthma symptoms. (Testimony). Ms. Lewis testified that she asked Tyson if there was a job that she could do that did not require her to enter a cold area. (Testimony). She was told that she had no choice as the janitorial position for which she was hired required her to enter cold areas of the plant. (Testimony).

On January 31, 2020, Sumit Mukherjee, M.D., examined Ms. Lewis for a pulmonary consult. (JE 8:84-86). Dr. Mukherjee reviewed records provided by Tyson. (JE 8:84). Dr. Mukherjee reviewed the claimant's history. (JE 8:84). Ms. Lewis told the doctor that since changing positions, she had not noticed any significant cough, wheezing, or chest tightness. (JE 8:84). She continued to notice some dyspnea on exertion, as well as wheezing when walking outside into cold temperatures. (JE 8:84). She denied previous asthma or respiratory issues. (JE 8:84). She told Dr. Mukherjee that the previously prescribed Symbicort did not help her much. (JE 8:84). Upon examination Dr. Mukherjee found Ms. Lewis to have clear, unlabored respirations. (JE 8:85). Dr. Mukherjee diagnosed Ms. Lewis with cold-induced asthma and obesity. (JE 8:85). The doctor ordered recent imaging and pulmonary function testing studies. (JE 8:86). Dr. Mukherjee noted, "[p]atient does describe symptoms consistent with cold induced asthma. Recommend that patient continue to use albuterol HFA on an as-needed basis." (JE 8:86). The doctor also recommended that Ms. Lewis use her inhaler prior to exposure to cold air. (JE 8:86). Dr. Mukherjee opined that Ms. Lewis's obesity may also contribute to her dyspnea. (JE 8:86).

Dr. Mukherjee promulgated a letter on April 1, 2020. (DE C:1). He checked a line marked "[n]o" in response to the question: "[i]s the 06/23/19 [*sic*] work-related injury the prevailing factor in her pulmonary diagnoses?" (DE C:1). He indicated that Ms.

Lewis's current diagnosis was cold induced asthma, and that she was discharged from care at MMI on January 31, 2020. (DE C:1).

Dr. Wampler replied to a letter from Tyson on April 29, 2020. (JE 5:74; DE B:1). He indicated that Ms. Lewis sustained no functional impairment from her work at Tyson. (JE 5:74; DE B:1).

Dr. Mukherjee saw Ms. Lewis again on July 29, 2020, for additional examination. (JE 8:87-88). Ms. Lewis complained that she had increased shortness of breath since her prior visit, and also noted that she felt limited in working out or using stairs. (JE 8:87). Ms. Lewis used her albuterol inhaler two to three times per day, and noted that she experienced a dry, nonproductive cough. (JE 8:87). Her breathing issues were triggered by humidity, exhaust, smoke, and cold air. (JE 8:87). Dr. Mukherjee diagnosed Ms. Lewis with reactive airway disease and moderate "DOE." (JE 8:88). Dr. Mukherjee recommended that the claimant try Arnuity 100, that the claimant continue albuterol, that the claimant initiate Singulair once per day, and ordered a CBC and echocardiogram. (JE 8:88).

On October 29, 2020, Ms. Lewis returned to Dr. Mukherjee's office for continued follow-up of her reactive airway disease. (JE 8:89-90). Ms. Lewis complained of continued intermittent shortness of breath with exercise. (JE 8:89). However, she had no shortness of breath with daily activities or at rest. (JE 8:89). Ms. Lewis felt that she obtained no benefit from using Symbicort or Arnuity. (JE 8:89). Her triggers remained humidity, exhaust, smoke, cold air, and exercise. (JE 8:89). Dr. Mukherjee noted that Ms. Lewis had irritant-induced, cold-induced and exercise-induced reactive airway symptoms. (JE 8:90). She failed corticosteroid therapy, but responded well to short acting bronchodilation. (JE 8:90). Dr. Mukherjee recommended that the claimant continue Singulair and short acting bronchodilators. (JE 8:90).

Ms. Lewis continued her follow-up visits with Dr. Mukherjee on February 17, 2022. (JE 8:91-92). Ms. Lewis stopped using Symbicort, but continued to use albuterol as needed. (JE 8:91). She continued to have intermittent shortness of breath with exercise, but had no shortness of breath with daily activities or at rest. (JE 8:91). Ms. Lewis tried Symbicort and Arnuity with no benefit. (JE 8:91). Ms. Lewis continued to have intermittent triggers such as humidity, exhaust, smoke, exercise, and cold air. (JE 8:91). Dr. Mukherjee continued to diagnose Ms. Lewis with reactive airway disease, moderate "DOE," and obesity. (JE 8:92). Dr. Mukherjee concluded:

> Does have irritant induced, cold-induced, and exercise-induced reactive airway symptoms. Has failed inhaled corticosteroid therapy with Breo but does respond well to short acting bronchodilation and would recommend continuing this. She does however continue to use this regularly and I believe that restarting ICS therapy with Symbicort 2 puffs twice daily as [*sic*] warranted at this time given her level of dyspnea need for rescue. She previously has tolerated Symbicort better than Breo. Continue Singulair daily. CBC shows no evidence of eosinophilia.

(JE 8:92). Dr. Mukherjee recommended that the claimant return in one year. (JE 8:92).

After leaving Tyson, Ms. Lewis returned to Oriental Trading. (Testimony). She earned between ten and 00/100 dollars ($10.00) and eleven and 00/100 dollars ($11.00) per hour, and worked 40 hours per week at Oriental Trading. (Testimony). Ms. Lewis left Oriental Trading after the outbreak of the COVID-19 pandemic due to her increased risk for COVID-19 complications as an asthmatic. (Testimony).

Ms. Lewis did not work for several months before getting a job in housekeeping with Life Care Center of Omaha. (Testimony). This was described as janitorial work, and Ms. Lewis testified that she could perform the job with limited difficulties. (Testimony). She earned twelve and 00/100 dollars ($12.00) per hour and worked about 30 hours per week. (Testimony). She wore a lightweight surgical mask. (Testimony). This was not a CNA position, as Ms. Lewis' CNA license is currently inactive. (Testimony). Ms. Lewis left her position with Life Care Center of Omaha after about eight months. (Testimony).

Ms. Lewis went on to work for Midwest Maintenance. (Testimony). She earned twelve and 00/100 dollars ($12.00) per hour, and worked 40 hours per week at Midwest Maintenance. (Testimony). Ms. Lewis eventually left Midwest Maintenance, and worked at Maple Crest at the time of the hearing. (Testimony). She worked in housekeeping. (Testimony). Her job involved "normal cleaning of bathrooms, dusting, mopping, sweeping," and emptying trash. (Testimony). She sometimes has difficulty doing this job, especially when she has to wear a heavier mask like an N-95. (Testimony). She started at Maple Crest earning fourteen and 04/100 dollars ($14.04) per hour, and at the time of the hearing earned fifteen and 04/100 dollars ($15.04) per hour. (Testimony). This is more than she made at Tyson. (Testimony).

Ms. Lewis testified that she currently uses two inhalers. (Testimony). One is Symbicort, and the other is albuterol. (Testimony). She also uses an albuterol nebulizer. (Testimony).

Ms. Lewis testified that her mother is a smoker and developed asthma later in life. (Testimony). Ms. Lewis's mother does not smoke inside of her house. (Testimony). Ms. Lewis's stepson and husband have asthma; however, she is not related to either of them in anything but a legal capacity. (Testimony). Ms. Lewis noted that she has never smoked. (Testimony). Ms. Lewis is a Medicaid beneficiary, and Medicaid was paying for her asthma medication prior to and at the time of the arbitration hearing. (Testimony).

Ms. Lewis also testified that she has used edible marijuana in the past; however, she has not smoked marijuana. (Testimony). She was arrested for possession of less than one ounce of smokable marijuana in 2019. (Testimony).

The claimant continues to wear an Avenger mask when it is cold outside. (Testimony). She also tries to stay in temperatures between 68 and 76 degrees. (Testimony). When she tries to play sports now, she ends up wheezing. (Testimony). However, according to her deposition testimony, she has not worked out or played basketball in some time. (DE A). Other than cold temperatures, humidity, exhaust from vehicles, and smoke irritate her asthma. (Testimony). Ms. Lewis agreed that she was never turned down for employment due to any temperature restrictions. (Testimony).

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.904(3).

Causation and Permanent Disability

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable, rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994). Supportive lay testimony may be used to buttress expert testimony, and therefore is also relevant and material to the causation question.

Iowa employers take an employee subject to any active or dormant health problems, and must exercise care to avoid injury to both the weak and infirm and the strong and healthy. Hanson v. Dickinson, 188 Iowa 728, 176 N.W. 823 (1920). While a claimant must show that the injury proximately caused the medical condition sought to be compensable, it is well established that a cause is "proximate" when it is a substantial factor, or even the primary or most substantial cause to be compensable under the Iowa workers' compensation system. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980).

While a claimant is not entitled to compensation for the results of a preexisting disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). It is well established in workers' compensation that "if a claimant had a preexisting condition or disability, aggravated, accelerated, worsened, or 'lighted up' by an injury which arose out of and in the course of employment resulting in a disability found to exist," the claimant is entitled to compensation. Iowa Dep't of Transp. v. Van Cannon, 459 N.W.2d 900, 904 (Iowa 1990). The Iowa Supreme Court has held,

> a disease which under any rational work is likely to progress so as to finally disable an employee does not become a "personal injury" under our Workmen's Compensation Act merely because it reaches a point of disablement while work for an employer is being pursued. It is only when there is a direct causal connection between exertion of the employment and the injury that a compensation award can be made. The question is whether the diseased condition was the cause, or whether the employment was a proximate contributing cause.

Musselman v. Cent. Tel. Co., 261 Iowa 352, 359-60, 154 N.W.2d 128, 132 (1967).

The parties stipulated that Ms. Lewis's injury arose out of and in the course of her employment with Tyson. Therefore, the question is whether the claimant has proven, by a preponderance of the evidence that her work injury, namely, cold-induced asthma, was a cause of permanent disability. The claimant makes no argument as to this in her post-hearing brief. She solely argues about post-injury medical billing and future treatment.

The defendant presents the opinions of Dr. Mukherjee and Dr. Wampler. Dr. Mukherjee opined that Ms. Lewis's June 23, 2019, injury was not a "prevailing factor" in her pulmonary diagnoses. He also opined that Ms. Lewis achieved MMI on January 31, 2020. It is unclear when Dr. Mukherjee wrote his opinion; however, if it was at the time of his initial evaluation of the claimant, it appears that his opinion may be based upon faulty information. Dr. Mukherjee noted in his initial report that he did not have access to the claimant's imaging or pulmonary function testing. It seems that this would be necessary in order to make a judgment on the issue. Additionally, the question in Iowa is not whether a condition is a "prevailing factor," but whether the condition was a proximate cause of the disability. I do not find the opinions of Dr. Mukherjee to be persuasive based upon the foregoing reasons.

Dr. Wampler, on the other hand, provides the only clear opinion on whether the claimant sustained a permanent impairment. Dr. Wampler opined that Ms. Lewis sustained no functional impairment based upon her work at Tyson.

Considering Dr. Wampler's opinions are unrebutted, I find them to be the most persuasive. I conclude that the claimant's cold-induced asthma was not a cause of permanent disability.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss of use of a scheduled member under Iowa Code 85.34(2)(a) - (u) or for loss of earning capacity under Iowa Code 85.34(2)(v). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998).

An injury to a scheduled member may, because of after effects or compensatory change, result in permanent impairment of the body as a whole. Such impairment may in turn be the basis for a rating of industrial disability. It is the anatomical situs of the

permanent injury or impairment which determines whether the schedules in Iowa Code 85.34(a) – (u) are applied. Lauhoff Grain v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943); Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

Generally, permanent partial disability falls into two categories. A scheduled member, as defined by Iowa Code section 85.34(a) – (u), or a loss of earning capacity, also known as industrial disability, as defined by Iowa Code section 85.34(2)(v). Lauhoff Grain v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943); Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936); Diederich v. Tri-City Ry. Co. of Iowa, 219 Iowa 587, 258 N.W. 899 (1935). Iowa Code section 85.34(2)(v) provides an alternative to the scheduled member and/or industrial disability compensation methods.

Iowa Code section 85.34(2)(v) states, in relevant part:

> If an employee who is eligible for compensation under this paragraph returns to work or is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury, the employee shall be compensated based only upon the employee's functional impairment resulting from the injury, and not in relation to the employee's earning capacity.

In determining whether the above provision of Iowa Code section 85.34(2)(v) applies, there is a comparison between the pre- and post-injury wages and earnings. McCoy v. Menard, Inc., File No. 1651840.01 (App. April 9, 2021). A claimant's hourly wage must be considered in tandem with the actual hours worked by that claimant or offered by the employer. Id.

Considering the claimant's injury at Tyson did not cause permanent disability, I find that an industrial disability analysis is not necessary in this case. The claimant's cold-induced asthma did not cause her to have a permanent disability.

I would note that the claimant makes an odd statement in her posthearing brief, namely that the defendant "should be found responsible for … any time she has had or will have off of work as a result" of her cold-induced asthma. The parties already stipulated that temporary disability was not an issue. Therefore, this issue will not be discussed further.

Payment of Medical Expenses

Simply because the claimant did not suffer a permanent disability, does not mean that the claimant is not entitled to recover medical expenses incurred as a result of the work injury at Tyson.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The

employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Iowa Code 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening, October 1975).

Pursuant to Iowa Code 85.27, claimant is entitled to payment of reasonable medical expenses incurred for treatment of a work injury. The claimant is entitled to an order of reimbursement if he/she has paid those expenses. Otherwise, claimant is entitled only to an order directing the responsible defendants to make such payments directly to the provider. See Krohn v. State, 420 N.W.2d 463 (Iowa 1988).

In cases where the employer's medical plan covers the medical expenses, claimant is entitled to an order of reimbursement only if he has paid treatment costs; otherwise, the defendants are ordered to make payments directly to the provider. See Krohn, 420 N.W.2d at 463. Where medical payments are made from a plan to which the employer did not contribute, the claimant is entitled to a direct payment. Midwest Ambulance Service v. Ruud, 754 N.W.2d 860, 867-68 (Iowa 2008) ("We therefore hold that the commissioner did not err in ordering direct payment to the claimant for past medical expenses paid through insurance coverage obtained by the claimant independent of any employer contribution."). See also Carl A. Nelson & Co. v. Sloan, 873 N.W.2d 552 (Iowa App. 2015)(Table) 2015 WL 7574232 15-0323.

The employee has the burden of proof to show medical charges are reasonable and necessary, and must produce evidence to that effect. Poindexter v. Grant's Carpet Service, I Iowa Industrial Commissioner Decisions, No. 1, at 195 (1984); McClellan v. Iowa S. Util., 91-92, IAWC, 266-272 (App. 1992).

The employee has the burden of proof in showing that treatment is related to the injury. Auxier v. Woodward State Hospital School, 266 N.W.2d 139 (Iowa 1978), Watson v. Hanes Border Company , No. 1 Industrial Comm'r report 356, 358 (1980) (claimant failed to prove medical charges were related to the injury where medical records contained nothing related to that injury) See also Bass v. Veith Construction Corp., File No 5044438 (App. May 27, 2016)(Claimant failed to prove causal connection between injury and claimed medical expenses); Becirevic v Trinity Health, File No. 5063498 (Arb. December 28, 2018) (Claimant failed to recover on unsupported medical bills).

Nothing in Iowa Code section 85.27 prohibits an injured employee from selecting his or her own medical care at his or her own expense following an injury. Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 205 (Iowa 2010). In order to recover the reasonable expenses of the care, the employee must still prove by a preponderance of the evidence that unauthorized care was reasonable and beneficial. Id. The Court in Bell Bros. concluded that unauthorized medical care is beneficial if it provides a "more favorable medical outcome than would likely have been achieved by the care authorized by the employer." Id.

The claimant seeks reimbursement for medical bills paid by Nebraska's Medicaid program, and other medical treatment which she sought. Based upon the information in

the record, the treatment sought by the claimant through her November 27, 2019, visit with Dr. Wampler was reasonable and beneficial to her. On November 27, 2019, Dr. Wampler indicated that Ms. Lewis had unsubstantiated fears as to her condition. Dr. Wampler opined that medical restrictions for her job as offered by CHI had no medical basis. At that time, he recommended that Ms. Lewis have a pulmonary IME. While Dr. Mukherjee based his opinion as to permanent impairment and/or causation on some faulty information, he opined that Ms. Lewis achieved MMI on January 31, 2020. This is based upon his examination of Ms. Lewis. This is the only date in the record from a doctor opining as to the claimant's achievement of MMI. There is no other doctor that indicates that the claimant needs medical care related to her work injury. This is also the date upon which the claimant's entitlement to reimbursement for her medical billing ends.

Based upon the information in the record, it appears that Nebraska's Medicaid program paid for the entirety of the claimant's medical care through the date in question, but for Dr. Mukherjee's IME appointment on January 30, 2020. Therefore, the defendant shall reimburse Nebraska Medicaid one thousand eight hundred four and 59/100 dollars ($1,804.59). The defendant represents that they previously paid a three hundred seventy-six and 36/100 dollars ($376.36) bill for Dr. Mukherjee's examination of the claimant on January 30, 2020. After that time, the claimant achieved MMI and is responsible for her own medical expenses.

Alternate Care

Iowa Code 85.27(4) provides, in relevant part:

> For purposes of this section, the employer is obligated to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

Iowa Code 85.27(4). See Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

"Iowa Code section 85.27(4) affords an employer who does not contest the compensability of a workplace injury a qualified statutory right to control the medical care provided to an injured employee." Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016) (citing R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 195, 197 (Iowa 2003)). "In enacting the right-to-choose provision in section 85.27(4), our legislature sought to balance the interests of injured employees against the competing interests of their employers." Ramirez, 878 N.W.2d at 770-71 (citing Bell

Bros., 779 N.W.2d at 202, 207; IBP, Inc. v. Harker, 633 N.W.2d 322, 326-27 (Iowa 2001)).

The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Iowa Code 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening, October 16, 1975). An employer's right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 18, 1988). Reasonable care includes care necessary to diagnose the condition, and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision, June 17, 1986).

The employer must furnish "reasonable medical services and supplies *and* reasonable and necessary appliances to treat an injured employee." Stone Container Corp. v. Castle, 657 N.W.2d 485, 490 (Iowa 2003)(emphasis in original). Such employer-provided care "must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Iowa Code section 85.27(4).

By challenging the employer's choice of treatment - and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See e.g., Iowa R. App. P. 14(f)(5); Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). An injured employee dissatisfied with the employer-furnished care (or lack thereof) may share the employee's discontent with the employer and if the parties cannot reach an agreement on alternate care, "the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order the care." Id. "Determining what care is reasonable under the statute is a question of fact." Long, 528 N.W.2d at 123; Pirelli-Armstrong Tire Co., 562 N.W.2d at 436. As the party seeking relief in the form of alternate care, the employee bears the burden of proving that the authorized care is unreasonable. Id. at 124; Gwinn, 779 N.W.2d at 209; Pirelli-Armstrong Tire Co., 562 N.W.2d at 436. Because "the employer's obligation under the statute turns on the question of reasonable necessity, not desirability," an injured employee's dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. Id.

The claimant requests medical care via an order for the defendant to continue to pay for her visits to pulmonary doctors, additional testing, and her prescriptions. I decline to award the claimant alternate care based upon the information in the record, as the claimant has not proven, by a preponderance of the evidence, that she is entitled to the same.

Costs

Claimant seeks the award of costs as outlined in Claimant's Exhibit 5. Costs are to be assessed at the discretion of the deputy commissioner hearing the case. See 876

Iowa Administrative Code 4.33; Iowa Code 86.40. 876 Iowa Administrative Code 4.33(6) provides:

> [c]osts taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, including convenience fees incurred by using the WCES payment gateway, and (8) costs of persons reviewing health service disputes.

Pursuant to the holding in Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015), only the report of an IME physician, and not the examination itself, can be taxed as a cost according to 876 IAC 4.33(6). The Iowa Supreme Court reasoned, "a physician's report becomes a cost incurred in a hearing because it is used as evidence in lieu of the doctor's testimony," while "[t]he underlying medical expenses associated with the examination do not become costs of a report needed for a hearing, just as they do not become costs of the testimony or deposition." Id. (noting additionally that "[i]n the context of the assessment of costs, the expenses of the underlying medical treatment and examination are not part of the costs of the report or deposition"). The commissioner has found this rationale applicable to expenses incurred by vocational experts. See Kirkendall v. Cargill Meat Solutions Corp., File No. 5055494 (App. Dec., December 17, 2018); Voshell v. Compass Group, USA, Inc., File No. 5056857 (App. Dec., September 27, 2019).

The claimant requests costs as follows:

Records from Dr. Mukherjee	$ 58.52
Filing Fee	$103.00
Certified Mail Charges for Service	$ 13.92
Medical Records	$ 25.50
Total:	$200.94

The claimant is not entitled to recover costs for obtaining medical records. Based upon my discretion, I award the claimant one hundred sixteen and 92/100 dollars ($116.92) for the filing fee and service charges.

ORDER

THEREFORE, IT IS ORDERED:

That the work injury suffered by the claimant was not a cause of permanent disability.

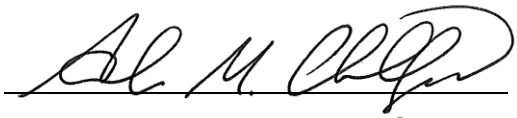
That the defendant shall reimburse the claimant's insurer one thousand eight hundred four and 59/100 dollars ($1,804.59).

That the claimant's request for alternate medical care is denied.

That the defendant shall reimburse the claimant one hundred sixteen and 92/100 dollars ($116.92) for costs incurred.

That the defendant shall file subsequent reports of injury (SROI) as required by this agency pursuant to 876 Iowa Administrative Code 3.1(2) and 876 Iowa Administrative Code 11.7.

Signed and filed this ____8TH__ day of November, 2022.



ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Laura Pattermann (via WCES)

Dillon Carpenter (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.